



Finalized 4(d) Rule for Green Sturgeon and What It Means to You

Summary of the Endangered Species Act Authorization Options
for Research and Monitoring Activities

21 July 2010

Sturgeon Project Work Team Meeting

**NOAA
FISHERIES
SERVICE**

Jeffrey Jahn

Fishery Biologist

Regional ESA Research & Enhancement Coordinator



Outline of Today's Presentation

- Section 4(d) of the ESA: protective regulations
- Summary of the final 4(d) rule for Southern DPS of North American green sturgeon
- Exceptions vs. Exemptions
- Exception Criteria
- Exemptions: ESA Sections 4(d), 7 and 10
- Annual 4(d) Research Program
- Authorizations and Permit for Protected Species website
- Questions and Discussion



June 2001: petition from several environmental organizations requesting that the agency list the North American green sturgeon (*Acipenser medirostris*) under the ESA.

January 2003: determination that listing of green sturgeon was not warranted.

March 2004: the U.S. District Court for the Northern District of California set aside the decision and remanded the case for further evaluation by NOAA Fisheries.

April 2005: proposed rule to list north American green sturgeon south of the Eel River, California, (the southern distinct population segment, or DPS) as threatened under the ESA.

April 2006: final rule listing the southern DPS of north American green sturgeon as threatened under the ESA.



May 21, 2009: proposed 4(d) take prohibition rule issued and open for public comment.

July 20, 2009: public comment period closed for proposed 4(d) rule.

June 2, 2010: final 4(d) rule take prohibition rule published in Federal Register

July 2, 2010: effective date of the final 4(d) rule
(interim exemption to the take prohibitions for ongoing research projects)



Section 4 of the Endangered Species Act

- ESA listing determinations
- critical habitat designation
- **protective regulations (section 4(d))**
- recovery planning
- delisting



Types of Take – Incidental Take

- Federal Agencies who fund, permit, or conduct an activity that affects listed marine or anadromous fish are required to conduct an ESA section 7 consultation with NOAA Fisheries.
- Examples of projects where a “Federal nexus” triggers a consultation are: bank stabilization projects, dredging, gravel mining, restoration projects, water diversion projects, dam operations and grazing on federal land.
- Some biological opinions require and authorize research and monitoring activities that are related to, or are part of, the proposed action.
- In some cases the resulting biological opinion covers the activities, in other cases additional authorization under sections 4(d) or 10 is warranted.



Types of Take – Direct Take

- Research, monitoring, and/or enhancement/hatchery activities result in the **direct take** of species that are listed pursuant to the ESA.
- Any entity conducting research, monitoring and/or enhancement activities on ESA listed anadromous fishes is required to obtain an ESA section 4(d) approval or section 10(a)(1)(A) research permit from NOAA Fisheries.
- Section 10(a)(1)(A) permits and 4(d) research approvals can be applied for on NOAA's Authorizations and Permits for Protected Species (APPS) website at <https://apps.nmfs.noaa.gov>



Final 4(d) Rule

NOAA Fisheries evaluated activities that would most likely impede efforts necessary to conserve and recover the Southern DPS:

- Commercial and Recreational Fisheries
- Tribal Fisheries
- Poaching
- **Research, Monitoring and Enforcement Activities**
- Emergency Rescue and Salvage Activities
- Habitat-altering Activities
- Habitat Restoration
- Entrainment and Impingement Risks
- Pesticides and Discharge of Pollutants



Final 4(d) Rule

FINAL Exceptions and Exemptions to the Take Prohibitions:

- Exceptions to the take prohibitions for activities that meet the exception criteria and are confirmed by NOAA Fisheries.
- Exemptions to the take prohibitions provided through an approved ESA 4(d) program
- Take Authorizations Provided by ESA Sections 7 and 10



Final Exceptions

- *Exceptions encompass specific activities that may be excluded from take prohibitions through a relatively informal coordination process.*
- *New information may require a re-evaluation of these exceptions at any time.*
- *All activities would be evaluated for effectiveness at conserving and protecting the Southern DPS*



Final Exceptions

- 1) ***Federal, State, or Private research or monitoring activities that meet specific criteria outlined in the final rule.***
- 2) Enforcement Activities
- 3) Emergency fish rescue and salvage activities that include aiding sick, injured, or stranded fish, disposing of dead fish, or salvaging dead fish for use in scientific studies, if the activities adheres to the criteria outlined in the proposed rule.
- 4) Habitat Restoration Activities



Exception Criteria: Federal, State, or
Private research or monitoring activities
MUST MEET ALL OF THE FOLLOWING:

- a) activity must comply with required state reviews or permits
- b) research or monitoring activity must be directed at the Southern DPS and NOT be incidental to research or monitoring of another species
- c) take of live mature adults from various waterways* may only occur from July 1 through March 1. * Lower Feather River (confluence with Sacramento River to Oroville Dam); Lower Yuba River (confluence with Feather River to Daguerre Dam); Suisun, San Pablo and San Francisco Bays or the Sacramento-San Joaquin Delta from the Golden Gate Bridge upstream to Keswick Dam.
- d) take must be non-lethal
- e) removal of any life stage of Southern DPS from the wild must not exceed 60 minutes



Exception Criteria: Federal, State, or Private research or monitoring activities

- f) take must not involve artificial spawning or enhancement activities
- g) a complete study description including proof of coverage for the incidental take of other listed species by NOAA Fisheries or USFWS must be reported to NOAA Fisheries at least 60 days prior to the start of the study
OR for ongoing studies by **AUGUST 31, 2010**
- h) a report that includes the total number of Southern DPS and any other listed species taken, information that supports that the take was non-lethal, and a summary of project results must be submitted to NOAA Fisheries on a schedule determined by NOAA Fisheries
- i) research or monitoring that involves a federal nexus must comply with the requirements of ESA section 7(a)(2)



Final Exemptions via approved Programs

- 1) ESA 4(d) Program for Commercial and Recreational Fishery Management
- 2) ESA 4(d) Program for Tribal Fishery Management
- 3) ESA 4(d) Program for Scientific Research and Monitoring Activities**



ESA 4(d) Program for Scientific Research and Monitoring Activities

State-coordinated research activities for scientific research may receive an exemption from the take prohibitions for the Southern DPS for activities included in a state-sponsored, ESA compliant, scientific research program between state fishery agencies and NOAA Fisheries

- must meet existing state and federal laws and regulations and would include research and monitoring projects conducted by state employees or by recipients of state fishery agency-issued permits (including Federal and non-Federal entities), that directly or incidentally take Southern DPS green sturgeon
- The Southern DPS will be incorporated into the existing ANNUAL state 4(d) research program (CDFG 4(d) Research Program) established for listed salmon and steelhead



ESA 4(d) Program for Scientific Research and Monitoring Activities

Researchers will be required to submit research applications to NOAA Fisheries and CDFG through the NOAA online application website Authorizations and Permits for Protected Species (APPS) at <https://apps.nmfs.noaa.gov>

- Application open season for 2010 4(d) Research Program will be **September 15 through October 18, 2010.**
- Each project application is reviewed and approved by CDFG and NOAA.
- In some cases CDFG and NOAA works with the applicant to further reduce effects associated with proposed research activities.



ESA 4(d) Program for Scientific Research and Monitoring Activities

- If project is approved for inclusion in the annual program, then the research activities are essentially exempt from the section 9 take prohibitions, as long as they are consistent with the approved activities and comply with the terms and conditions.
- Annual reports summarizing the results of each individual research project are submitted annually.
- Projects can be updated on annual basis since applicants apply annually



Take Authorizations Provided by ESA Sections 7 or 10 – Incidental Take

Federally funded, authorized, or implemented activities that may require **incidental take** authorization, and are not covered under an Exception or an Exemption provided by an approved 4(d) Program will be examined on a case-by-case basis through interagency consultation as prescribed by ESA section 7.

All other activities (i.e., those not federally funded, authorized, or implemented) that may require take authorization, and are not covered under an Exception or an Exemption provided by an approved 4(d) Program will be examined on a case-by case basis as prescribed by ESA section 10(a)(1)(B).



Take Authorizations Provided by ESA Section 10 – Direct Take

Federal, state and private-sponsored research activities for scientific research or enhancement purposes (hatchery activities) that result in **direct take** and are not covered under an Exception or an Exemption provided by an approved 4(d) Program, may obtain take authorization for Southern DPS fish through an ESA section 10(a)(1)(A) permit.

In some cases if the direct take is related to proposed or required monitoring of the effects or amount of take for an action consulted on via section 7, the Incidental Take Statement can provide take for these research and monitoring activities.



Summary of ESA Authorizations for research and monitoring Southern DPS Green Sturgeon

- 1) **Exception** - must meet exception criteria and receive approval by NOAA
- 2) ***Exemption under the annual CDFG 4(d) Research Program***– must coordinate with CDFG prior to applying. Annual application and approval with annual reporting requirement.
- 3) **Section 7 consultation-** Monitoring linked, included and analyzed in biological opinion.
- 4) **Section 10(a)(1)(A) research and/or enhancement permit-** typical permit is 5 year duration with annual reporting requirement.



Timelines of ESA Authorizations for research and monitoring Southern DPS Green Sturgeon

- 1) **Exception** - must submit project information at least 60 days prior to implementing the research activities OR for ongoing activities must submit project information by **AUGUST 31, 2010**
- 2) **Exemption under the CDFG 4(d) Research Program**– must submit application on the APPS website **September 15 – October 18, 2010**
- 3) **Section 7 consultation**- Monitoring linked and included in determined by section 7 consultations- apply for 4(d) research program by **October 18, 2010**
OR contact Doug Hampton if OCAP related or lead NOAA biologist for others
- 4) **Section 10(a)(1)(A) research and/or enhancement permit**- must submit application on the APPS website no later than **November 29, 2010**



apps.nmfs.noaa.gov

NOAA APPS Pre-Application Guide - Windows Internet Explorer

https://apps.nmfs.noaa.gov/questionnaire/questionnaire.cfm

File Edit View Favorites Tools Help

Windows Live Bing What's New Profile Mail Photos Calendar MSN Share

http://www.nmfs.noaa.gov/ NOAA APPS Pre-Applicati...

NOAA FISHERIES
NATIONAL MARINE FISHERIES SERVICE

Authorizations and Permits for Protected Species (APPS)

Features

- Home
- Online Application Instructions
- Pre-Application Guide
- Permit Types
- Laws and Regulations
- Species Lists
- Search Database
- Records Open for Public Comment
- When To Apply
- Contact Us

Let us know what you think about our site.
If you're having trouble or have questions, please email us.

Last Updated: 2008-07-01

Pre-Application Guide

Answer the following questions to determine the type(s) of permit you might need.

What species do you expect to encounter? (Check all that apply)

- ☐ Pacific Marine and Anadromous Fish listed under the ESA (including species proposed for listing and listed species without take prohibitions (e.g. Southern DPS Green Sturgeon))
- ☐ Marine Mammals
- ☐ Other (e.g. sea turtles, white abalone, shortnose sturgeon, smalltooth sawfish; species proposed for listing; listed species without take prohibitions; or any fish and invertebrates (freshwater and marine) in Oregon, etc.)

Where will your activities occur? (Check all that apply)

- ☐ U.S. locations, including offshore waters
 - For Pacific Marine and Anadromous Fish applications or for any applications in Oregon, choose which state:
 - ☐ California
 - ☐ Idaho
 - ☐ Oregon (including the Columbia River and offshore waters)
 - ☐ Washington (including the Columbia River and offshore waters)
 - ☐ International waters (including Antarctica and high seas)
 - ☐ Foreign countries, including territorial waters of those countries
- ☐ Is the proposed permit holder a US Citizen?
 - ☐ Yes
 - ☐ No

Reset | Next >

About Us | Privacy Policy | Information Quality Guidelines | Disclaimer



Key Information to Include in APPS Application

- Complete project description that identifies the goals and benefits clearly.
- SCP information for principle investigator
- SCP information in attached for all investigators
- Federal Information section
- Minimization Measure section: Indicate if activities are consistent with the National Sturgeon Research Guidelines
- If not consistent provide reasons and justification in project description section.



National Sturgeon Research Protocols

A Protocol for Use of Shortnose, Atlantic, Gulf, and Green Sturgeons

- Not yet published
- Expected to be published soon
- The final protocol document will be provided as soon as it is published
- Researchers should adhere to protocols, if protocols will not be followed then the project description should explain and justify why not.



Key Contacts

- David Woodbury, Recovery Coordinator, North Central Coast Office
- Shirley Witalis, Section 10(a)(1)(A), Central Valley Office
- Doug Hampton, Research related to OCAP BiOp, Central Valley Office
- Mary Nicholl, Research Permit Contractor, North Central Coast Office
- Russ Bellmer, CDFG Fisheries Branch, SCP and 4(d)
- Eloise Tavares, CDFG Fisheries Branch, SCP and 4(d)

Science, Service, Stewardship



Finalized 4(d) Rule for Green Sturgeon and What It Means to You

Questions and Discussion

**NOAA
FISHERIES
SERVICE**